

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

IN RE:

CAFFELL ENTERPRISES,
Debtor.

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CASE NO.: 10-40602
CHAPTER 11

NOTICE OF HEARING

TAKE NOTICE that the undersigned counsel for the Creditor making the Motion attached will call on the attached Motion for a hearing at 9:30 a.m. on the 1st day of December, 2010, in the United States Bankruptcy Court in Charlotte at 401 West Trade Street, the same to be held as soon thereafter as the Court will hear the same.

THIS the 13th day of November, 2010.

VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.

By: /s/ Mark A. Pinkston

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CASE NO.: 10-40602
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**MOTION FOR ADEQUATE PROTECTION AND RELIEF FROM THE AUTOMATIC
STAY AND REQUEST FOR APPLICATION OF 11 U.S.C. §362(e)**

1. The Creditor making this Motion is TD Bank, NA, successor by merger to Carolina First Bank, hereinafter referred to as "Creditor".
2. The Creditor is owed money by the Debtor because of three Promissory Notes, copies of which are attached hereto as **Exhibit A** (Note # 1), **Exhibit B** (Note #2), and **Exhibit C** (Note #3).
3. The Notes are secured by Deeds of Trust and/or Security Agreements and collateral evidenced by the documents attached hereto as **Exhibits D, E, and F**. The collateral is further described as follows:
 - a. Note # 1 (See Exhibit D) –
 - i. *Security Agreement covering all inventory, equipment, accounts and other rights to payment of D&H, LLC.*
 - ii. *Security Agreement covering all inventory, equipment, accounts and other rights to payment of the Debtor.*
 - iii. *Assignment of Death Benefits on life of Harold Lee Caffell in the amount of \$500,000 from a policy issued by Empire General Life Assurance Corporation.*
 - iv. *Deed of Trust to 45.979 acres of real property located at 160 Executive Drive, Rutherfordton, North Carolina and 1.97 acres of real property located at 551 Harris Henrietta Road, Rutherfordton, North Carolina which real property is owned by D&H, LLC.*

- v. *Assignment of Leases and Rents for 45.979 acres of real property located at 160 Executive Drive, Rutherfordton, North Carolina and 1.97 acres of real property located at 551 Harris Henrietta Road, Rutherfordton, North Carolina which real property is owned by D&H, LLC.*¹

b. Note # 2 (See Exhibit E) –

- i. *Security Agreement covering production equipment owned by the Debtor.*
- ii. *Deed of Trust to 28.838 acres of real property located at 160 Executive Drive, Rutherfordton, North Carolina which real property is owned by D&H, LLC.*
- iii. *Assignment of Leases and Rents for 28.838 acres of real property located at 160 Executive Drive, Rutherfordton, North Carolina which real property is owned by D&H, LLC.*²

c. Note # 3 (See Exhibit F) –

2004 Chevrolet Truck Model WT500 – VIN J8BF5C13347700072

- 4. The balance of the Note # 1 (Exhibit A) is \$2,599,519.00 and said debt continues to accrue interest from the 12th day of November, 2010 and attorney's fees are due as well.
- 5. The balance of the Note # 2 (Exhibit B) is \$ 258,446.40 and said debt continues to accrue interest from the 12th day of November, 2010 and attorney's fees are due as well.
- 6. The collective value of the collateral for Note # 1 (see Exhibit D) and Note # 2 (see Exhibit E) is approximately \$1,837,000.00.³
- 7. The balance of the Note # 3 (Exhibit C) is \$2,536.89 and said debt continues to accrue interest from the 12th day of November, 2010 and attorney's fees are due as well.
- 8. The value of the collateral for Note # 3 (see Exhibit F) is approximately \$2,500.00.
- 9. That the amount of the indebtedness is increasing from day to day.
- 10. That the value of the collateral is decreasing from day to day.

¹ It should be noted that this real property is leased by the Debtor from D&H, LLC. Upon information and belief, the Debtor was two months in arrears on its lease payments to D&H, LLC at the time of the Debtor's bankruptcy filing. The Debtor has made no rent payments to D&H, LLC since the Debtor's bankruptcy filing.

² See F/N # 1.

³ Note # 1 and Note # 2 are secured by the some of the same collateral. The second Deed of Trust securing Note # 2 (see Exhibit E) pertains to only a portion of the property covered by the first Deed of Trust securing Note # 1 (see Exhibit D). The security agreement and Deed of Trust for Note # 2 (see Exhibit E) are subordinate to the security agreement and Deed of Trust for Note # 1 (see Exhibit D).

11. That it appears that the Debtor or Trustee is using or selling or leasing said property without providing adequate protection.
12. That the Debtor is in default under the aforesaid debt.
13. Creditors and others having an interest in the collateral known to the Movant in order or priority are: None Known
14. The Creditor requests application of 11 U.S.C. §362(e).
15. The Creditor alleges that the automatic stay does not extend to all of the Creditor's collateral. However, the collateral is described in this motion in its entirety for the convenience of the Court and all parties in interest.

WHEREFORE, the Creditor prays the Court as follows:

1. For an Order providing it adequate protection pursuant to 11 U.S.C. §361;
2. Immediate Relief from the Automatic Stay for cause pursuant to 11 U.S.C. §362(d);
3. That Creditor be allowed a reasonable period of time to file a proof of claim for any deficiency balance resulting after disposition of the collateral.

THIS the 13th day of November, 2010.

VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.

By: s/ Mark A. Pinkston

Mark A. Pinkston
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing Notice of Hearing and Motion for Relief from Stay in the above-entitled action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows or as electronically filed and served:

Richard Wright served electronically

US Bankruptcy Administrator served electronically

THIS the 13th day of November, 2010.

s/ Mark A. Pinkston
Mark A. Pinkston